

940 CMR 29.00: OPEN MEETING LAW REGULATIONS

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29.01: Purpose, Scope and Other General Provisions

- (1) Authority. The Attorney General promulgates 940 CMR 29.00, relating to the Open Meeting Law (“OML”), pursuant to G.L. c. 30A, § 25 (a) and (b).
- (2) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, G.L. c. 30A §§ 18-25.
- (3) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.
- (4) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Commission means the Open Meeting Law Advisory Commission, as defined by G.L. c. 30A, § 19(c).

Emergency means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation means an act or omission by a public body, or a member of a public body, that knowingly violates the OML. Repeated conduct in violation of the OML will be considered evidence of an intentional violation where the body or member has previously been authoritatively advised that the conduct violates the OML.

MMA means the Massachusetts Municipal Association.

MNPA means the Massachusetts Newspaper Publishers Association.

OML means the Open Meeting Law, G.L. c. 30A, §§ 18-25.

Person means all individuals and entities, including governmental officials and employees. “Person” does not include public bodies.

Post notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, cable television channel, newspaper or in a loose-leaf binder in a manner conspicuously visible to the public, including disabled persons, in accordance with 940 CMR 29.03.

Public body has the identical meaning as set forth in G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided, further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

29.03: Notice Posting Requirements

(1) Requirements Applicable to Local, Regional, District, County, and State Public Bodies

- (a) Except in an emergency, public bodies shall file meeting notices at least 48 hours in advance of a public meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.
- (b) Meeting notices shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.

(2) Requirements Specific to Local Public Bodies

- (a) The municipal clerk, or other such person designated by the municipality, shall post notice of the meeting in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located, and the date and time that the notice is posted shall be conspicuously recorded thereon. Such notice shall be accessible to the public in the municipal clerk's office. If such notice is not conspicuously visible to the public during hours when the clerk's office is closed, such notice shall also be made available through an alternative method prescribed or approved by the Attorney General under 940 CMR 29.04. A description of such alternative method, sufficient to allow members of the public to obtain notice through such method, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
 - (b) The municipal clerk shall file with the Attorney General written notice of the municipality's notice posting method and any change thereto. All public bodies in the municipality shall consistently use the municipality's most current notice posting method on file with the Attorney General.
- (3) Requirements Specific to Regional or District Public Bodies. Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for or selected by local public bodies in that city or town.
 - (4) Requirements Specific to Regional School Districts. The secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed or selected by local public bodies in that city or town.
 - (5) Requirements Specific to County Public Bodies. Notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose. The public body shall file with the Attorney General written notice of the public body's notice posting method and any change thereto. The public body shall consistently use the most current notice posting method on file with the Attorney General.
 - (6) Requirements Specific to State Public Bodies. Notice shall be posted on a website in accordance with procedures established by the Attorney General in consultation with the Information Technology Division of the Executive Office for Administration and Finance (EOAF) for the purpose of providing the public with effective notice. A copy of each notice shall also be sent to EOAF and to the Secretary of State's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its Internet notice posting location and any change thereto. The public body shall consistently use the most current notice posting method on file with the Attorney General.

29.04: Alternative Notice Posting Methods

For local public bodies, the Attorney General has determined that the following alternative methods will provide more effective notice to the public, provided that all meeting notices posted under an alternative method shall include the same content as required by section 29.03(1)(b) and shall also be available during hours when the clerk's office is open in the manner required by subsection 29.03(2)(a):

- (1) public bodies may post notice of meetings on the municipal website, **AND**, post notice or provide Internet access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (2) public bodies may post notice of meetings on cable television, **AND**, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (3) public bodies may post notice of meetings in a newspaper of general circulation in the municipality, **AND**, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (4) public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building, or;
- (5) public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

29.05: Complaints

- (1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints.
- (2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an OML complaint form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.
- (3) For local public bodies, the complainant shall file the complaint with the municipal clerk. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body. The complaint shall be filed within 30 days of the alleged OML violation, or if the alleged OML

violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

- (4) The public body shall review timely complaints to ascertain the time, date, place and circumstances which constitute the alleged violation. If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within 10 business days after he or she receives the request. The public body will then have an additional 10 business days after receiving complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).
- (5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided below, the public body shall review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. The public body shall simultaneously notify the complainant that it has sent such materials to the Attorney General and shall provide the complainant with a copy of the description of any remedial action taken.
 - (a) Any remedial action taken by the public body in response to a complaint under this section shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.
 - (b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.
- (6) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a copy of the original complaint with the Attorney General along with any other materials the complainant believes are relevant. The Attorney General may decline to investigate complaints filed with the Attorney General more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.
- (7) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days. If additional time is necessary to resolve a particular complaint, the Attorney General will notify the complainant and the public body.

- (8) If a complaint appears untimely, is not in the proper form, or is missing information, the Attorney General shall return the complaint to the complainant within 14 business days of its receipt, noting its deficiencies. The complainant shall then have 14 business days to correct the deficiencies and resubmit the complaint to the Attorney General. If the deficiencies are not corrected, no further action on the complaint will be taken by the Attorney General.

29.06: Investigation

Whenever the Attorney General has reasonable cause to believe that an OML violation has occurred that has not been adequately remedied, then the Attorney General may conduct an investigation.

- (1) The Attorney General shall notify the public body or person that is the subject of the investigation and any complainant within a reasonable period of time of the existence of the investigation and the nature of the alleged OML violation being investigated.
- (2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General, addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue subpoenas to obtain the information in accordance with G.L. c. 30A, § 24, to:

- (a) Take testimony under oath;
- (b) Examine or cause to be examined any documentary material; or
- (c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or other action taken to conduct or resolve the investigation pursuant to these regulations.

29.07: Resolution

- (1) No Violation. If the Attorney General determines, after investigation, that the OML has not been violated, the Attorney General shall terminate the investigation and notify, in writing, the subject of the investigation and any complainant.
- (2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that the OML has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon finding a violation of the OML, the Attorney General may take one of the following actions:
 - (a) Informal action. The Attorney General may resolve the investigation with a telephone call or letter that explains the violation and clarifies the subject's obligations under the OML, providing the subject with a reasonable period of time to comply with any outstanding obligations.
 - (b) Formal order. The Attorney General may resolve the investigation with a formal order. The order may require:
 1. immediate and future compliance with the OML;
 2. attendance at a training session authorized by the Attorney General;
 3. that minutes, records or other materials be made public; or
 4. other appropriate action.

Orders shall be available on the Attorney General's website.

- (3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00, et seq., as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether an OML violation occurred, whether the public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:
 - (a) immediate and future compliance with the OML;
 - (b) attendance at a training session authorized by the Attorney General;
 - (c) nullification of any action taken at the relevant meeting, in whole or in part;
 - (d) imposition of a fine upon the public body of not more than \$1,000 for each intentional violation;

- (e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
- (f) that minutes, records or other materials be made public; or
- (g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

- (4) A public body or any member of a body aggrieved by any order issued by the Attorney General under this section may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of certiorari. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General may issue advisory opinions on request or at his or her own initiative to provide guidance to public bodies and the public on changes in the OML, court decisions interpreting the OML, or other OML developments.

- (1) The Attorney General shall ordinarily make a draft advisory opinion available for comment on the Attorney General's website at least 60 days prior to the planned issuance of the opinion. Notice of the posting shall be provided to the MMA, the MNPA and the Commission.
- (2) Comments on the draft advisory opinion shall be submitted, in writing, to the Attorney General at least 30 days prior to the planned issuance of the opinion.
- (3) Action taken by a public body in good faith compliance with an advisory opinion, provided that the circumstances are not materially different, shall not constitute an intentional violation of the OML.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce the OML pursuant to G.L. c. 30A, § 23(f).